

HARLEY WAYNE POTTROFF
Claimant

VS.

POTTROFF ACCOUNTANCY CORP.
Respondent

AND

STATE FARM FIRE & CASUALTY CO.,
Insurance Carrier

ORDER

ISSUES

The respondent's insurer sought an order from the Administrative Law Judge (ALJ) allowing it to terminate medical treatment based upon the written report authored by Dr. Parmet which indicated claimant was no longer in need of ongoing treatment for his respiratory complaints other than possibly an evaluation at the National Jewish Hospital, in Denver, Colorado.

The ALJ granted the insurer's request, but indicated that the referral to the National Jewish Hospital in Denver "would be appropriate".¹

The claimant requests review of this decision alleging that the ALJ erroneously terminated his treatment with Dr. M.H.V. Strickland, "a well qualified allergist treating

¹ ALJ Order (Dec. 29, 2005) at 2.

claimant for building (paint fumes-mold) and work related illnesses."² Claimant believes the Board should designate Dr. Strickland the local treating physician, so that he may oversee the testing in Denver which respondent apparently intends on providing.

Respondent argues there is no jurisdiction to hear this matter as the ALJ's determination was nothing more than a decision related to medical treatment, and not one that involved a question as to compensability of claimant's claim. Respondent urges the Board to dismiss claimant's appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

K.S.A. 44-534a restricts the jurisdiction of the Board to consider appeals from preliminary hearing orders to the following issues:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

These issues are considered jurisdictional and subject to review by the Board upon appeals from preliminary hearing orders. The Board can also review a preliminary hearing order entered by an administrative law judge if it is alleged the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested.³

Claimant does not allege the ALJ exceeded his jurisdiction in limiting medical care. Thus, unless claimant's request falls within one of the four statutory criteria, the Board has no jurisdiction to hear this matter and the appeal must be dismissed.

In an effort to stave off respondent's contention that there is no jurisdiction, the claimant asserts that -

² Application for Review at 1 (filed Jan. 10, 2006).

³ See K.S.A. 44-551.

Review of a Preliminary Hearing Award is available when the Order does not resolve the issues presented, and specifically when the Order does not conclusively determine the disputed question.⁴

Claimant then cites two previous Board decisions which, upon close review, have no real relevance to the pending appeal.

Rhodeman,⁵ the first case referenced by claimant, discusses when an Order is to be considered final. Finality is not an issue in this appeal. In the second case, *Farra*,⁶ the Board considered the ability to appeal a preliminary hearing Order granting a claimant's request for psychiatric treatment. Originally the Board viewed such orders as involving the nature and extent of a claimant's claim, an issue that is not appealable. But upon reflection, the Board considered that determination to be more a question of compensability and as such, the Board had jurisdiction to consider such an appeal.

In this instance, the compensability of claimant's alleged work-related injury is apparently not in dispute, at least at this juncture. Treatment has been provided, by Dr. Strickland, who was selected by claimant, and to which respondent's insurer did not object.⁷ However, when Dr. Strickland offered no further active treatment, the insurer sought a second opinion.

Claimant was evaluated by Dr. Allen J. Parmet on October 18, 2005. Highly summarized, Dr. Parmet indicated that claimant needs no further treatment and he began to seriously question the validity of claimant's symptoms (along with the treatment offered by Dr. Strickland). Nonetheless, he did suggest that an evaluation at the National Jewish Hospital in Denver would be appropriate.

The ALJ was persuaded by Dr. Parmet's opinions and authorized the visit to the facility in Denver. There was no designation of a local physician included within this Order.

The Board finds that the focus of this appeal is not an issue over which the Board has jurisdiction. Respondent (through its insurer) sought to terminate medical treatment and the ALJ agreed with respondent's contentions, but he did go ahead and authorize an evaluation as recommended by Dr. Parmet. This is not a compensability issue. Thus, the only authority the Board has is to dismiss this appeal.

⁴ Claimant's Brief at 1 (filed Jan. 30, 2006).

⁵ *Rhodeman v. Moore Management*, No. 234,890, 1999 WL 1008029 (Kan. WCAB Oct. 12, 1999).

⁶ *Farra v. Mercy Hospital*, No. 1,005,822, 2004 WL 1301715 (Kan. WCAB May 27, 2004).

⁷ The claimant in this claim is also the respondent.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bryce Benedict dated December 28, 2005, is dismissed.

IT IS SO ORDERED.

Dated this _____ day of February, 2006.

BOARD MEMBER

c: William J. Pauzauskie, Attorney for Claimant
Denise E. Tomasic, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director